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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of the Telecommunications Act of 1996:	)	CC Docket No. 96-115
Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information	)	
Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended	)	CC Docket No. 96-149

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AT&T COMMENTS ON MCI WORLDCOM PETITION FOR FURTHER RECONSIDERATION

Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, and its Public Notice, Report No. 2371, published in 64 Fed. Reg. 62672 (November 17, 1999), AT&T Corp. ("AT&T") submits these comments in support of the petition for further reconsideration filed by MCI WorldCom, Inc. ("MCI") of the Commission's September 3, 1999 reconsideration decision, FCC 99-223 (*Reconsideration Order*), governing carriers' use of Customer Proprietary Network Information ("CPNI").

I. THE COMMISSION SHOULD EXPRESSLY HOLD THAT AN INCUMBENT'S FAILURE TO PROVIDE ACCESS TO CPNI TO A NEW ENTRANT THAT HAS OBTAINED CUSTOMER CONSENT VIOLATES SECTIONS 201(b), 251(c)(3) AND 251(c)(4) OF THE COMMUNICATIONS ACT.

In the *Reconsideration Order*, the Commission reaffirms its finding that "although an incumbent carrier is not required to disclose CPNI pursuant to section 222(d)(1) or

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section 222(c)(2) absent an affirmative written request, local exchange carriers may need to disclose a customer's service record upon the oral approval of the customer to a competing carrier prior to its commencement of service as part of the LEC's obligations under sections 251(c)(3) and (c)(4). In this way, section 222(c)(1) permits any sharing of customer records necessary for the provision of services by a competitive carrier. . . ." *CPNI Order*, ¶ 84[1]; *Reconsideration Order*, ¶ 86. The Commission further reaffirmed that a carrier's failure to disclose CPNI to a competing carrier that seeks to initiate service to a customer may well constitute an unreasonable practice in violation of section 201(b). *Id.*, ¶ 85; *Reconsideration Order*, ¶ 90. For the reasons explained in MCI's petition, the Commission should now hold that an incumbent's failure to disclose feature information to a new entrant, upon the customer's oral approval, for making a competitive price comparison and initiating service violates these sections of the Communications Act.

MCI (at 2; 1-10) demonstrates that "[n]ew entrants should be able to access local customer feature information during the marketing call for the purpose of providing price and service comparisons to a prospective customer and for the purpose of submitting local orders for service with the incumbent." Absent information concerning the features (for example, Caller ID, call waiting, three-way calling) to which a customer subscribes, the new entrant cannot provide an accurate price quote or prompt, seamless provision of service identical to that which

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[1] Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket Nos. 96-115 and 96-149, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-27 (February 26, 1998) (*CPNI Order*).

the customer had received from the incumbent. Like MCI, it has been AT&T's experience that customers frequently do not know the particular service options that they are receiving from the incumbent, yet want the *same* service from their new provider. A new entrant cannot offer valid service and price comparisons so that a customer can make an informed decision or provide seamless service absent access to feature information.

Moreover, as AT&T has repeatedly shown,[2] there can be serious potential negative consumer impacts if this information is not made available to the new entrant. Indeed, the lack of such information could severely *compromise* the customer's privacy and personal safety. For example, if a customer subscribed to per-line blocking for Caller ID purposes with the LEC and fails to advise the new entrant of this fact, without the customer's service record, the new entrant would provide the customer with per-call blocking in accordance with the FCC's rulings in CC Docket 91-281.[3] If the customer then places a call believing that its line still has per-line blocking, the customer's calling party number ("CPN") will be disclosed to any called party who has Caller ID.[4] Because certain customers could be endangered if their telephone number were

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[2] AT&T Comments, CC Docket Nos. 96-115 and 96-149, June 11, 1999, at 17-19; AT&T Comments, CC Docket No. 96-115, August 24, 1999, at 4-7; AT&T Reply Comments, id., September 1, 1999, at 3-4.

[3] Rules and Policies Regarding Calling Number Identification Service – Caller ID, CC Docket No. 91-281, Memorandum Opinion and Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking, FCC 95-187, ¶¶ 81-87 (May 5, 1995).

[4] The only way the customer could block disclosure of his or her CPN would be by first dialing *67, which the customer would not do if he or she thinks that per-line blocking is in place.

disclosed, this outcome could threaten their personal safety. Similarly, if the 911 database does not contain accurate information, customer safety issues may also arise.

At the same time, the customer's CPNI privacy interests are fully protected by the fact that the new entrant is subject to the entire set of CPNI use restrictions that the Commission has imposed on all carriers. Under those rules, absent affirmative customer consent, the new entrant would not be able to use the customer's local CPNI for marketing out-of-category services, unless the customer is already subscribed to the new entrant's long distance or wireless services. To avoid customer frustration and delay and to foster competitive local markets, the Commission should require LECs to make feature information available to new entrants upon the customer's oral consent and hold that their failure to do so would constitute a violation of sections 201(b), 251(c)(3) and 251(c)(4) of the Communications Act.

II. THE COMMISSION SHOULD HOLD THAT CARRIERS MAY DISCLOSE PIC FREEZE INFORMATION.

The *Reconsideration Order* (¶ 148) holds that PIC freeze information is CPNI, and the seeming implication of this is that it could not be disclosed by a LEC to a third party absent customer approval. As MCI (at 16) correctly points out, however, "PIC freeze information has nothing to do with the quantity of telecommunications service purchased, or its amount of use. It obviously has nothing to do with 'destination' of services purchased. Nor is PIC freeze information a technical configuration. A PIC freeze has no technical content at all – it exists in a database that has nothing to do with how calls are routed, configured, or billed, and simply prevents another carrier from initiating a PIC change without the customer's permission. Nor does the PIC freeze relate to the 'type' of service offered." Thus, contrary to the Commission's holding, PIC freeze information does *not* constitute CPNI under the Act. 47 U.S.C. § 222(f)(1)(A).

Further, the Commission's holding that PIC freeze information is CPNI could preclude LECs from disclosing this information to other carriers, contrary to the public interest. In the *Slamming Order*, the Commission expressly found that there could be consumer *benefits* if LECs were to make PIC freeze information available as part of their OSS systems.[5] A disclosure of PIC freeze information by the LEC to other carriers would actually serve to *protect* consumer privacy because carriers would not target their marketing efforts at customers who have indicated through a PIC freeze that they do not intend to change carriers. And there is no legitimate consumer privacy interest that would be compromised by such a disclosure. In short, the *Reconsideration Order's* holding that PIC freeze information is CPNI is contrary to the statutory definition and the public interest and should be promptly rescinded.

III. THE COMMISSION SHOULD MODIFY THE DURATION OF CALL CONSENT FOR INBOUND CALLS.

The *Reconsideration Order* (n.511) specifies the notice the carrier must provide to a customer to obtain consent under section 222(d)(3) to access CPNI for the duration of a telephone call between the customer and the carrier. The requirement that the carrier explain to the customer that if CPNI consent is denied the customer's service will not be adversely affected should be eliminated. As MCI (at 14-15) shows, this is a confusing and illogical statement in the context of an inbound call. Where a customer has contacted the carrier for information or

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[5] Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1997: Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-334, ¶ 133 (December 23, 1998) (*Slamming Order*).

regarding service, there is "no reason to believe that customers have any concern that their services will be affected if they do not agree to carrier's using their CPNI to market a new and different kind of service to them." MCI at 15. Thus, the Commission should eliminate this aspect of the notice requirement.

CONCLUSION

For the reasons stated above, the Commission should reconsider and clarify its CPNI rules.

Respectfully submitted,

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December 2, 1999

CERTIFICATE OF SERVICE

I, Laura V. Nigro, do hereby certify that on this 2nd day of December 1999, a copy of the foregoing "AT&T Comments on MCI WorldCom Petition for Further Reconsideration" was served by U.S. first class mail, postage prepaid, on the party named below.

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/s/ Laura V. Nigro
Laura V. Nigro